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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D., as an
individual and in his representative
capacity under Business & Professions
Code § 17200 *et seq.*,

Plaintiff,

vs.

RUSSELL D. STANTEN, M.D., LEIGH
I. G. IVERSON, M.D., STEVEN A.
STANTEN, M.D., WILLIAM M.
ISENBERG, M.D., Ph.D., ALTA BATES
SUMMIT MEDICAL CENTER and does
1 through 100,

Defendants.

E-filing

JCS

C 07 : 2486
Case No.:

COMPLAINT RE:

- (1) RACE DISCRIMINATION;**
- (2) VIOLATION OF UNRUH ACT;**
- (3) VIOLATION OF CARTWRIGHT ACT;**
- (4) TORTIOUS INTERFERENCE WITH RIGHT TO PRACTICE PROFESSION;**
- (5) CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

DEMAND FOR JURY TRIAL

JURISDICTION

1. This action arises under 42 U.S.C. Section 1981 as hereinafter more fully appears.

NATURE OF ACTION

2. This case arises out of the concerted effort of medical doctors Steven A. Stanten, M.D., Russell D. Stanten, M.D., Leigh I.G. Iverson, M.D., and William M. Isenberg, M.D., Ph.D. (collectively "Individual Defendants") and Alta Bates Summit Medial Center ("Alta Bates Summit") to destroy the career of Plaintiff Coyness L. Ennix Jr., M.D. ("Plaintiff or "Dr.

1 Ennix”), a highly experienced and accomplished African American cardiac surgeon. Defendants
2 sponsored, initiated and/or participated in a lengthy sham peer review process that falsely sought
3 to blame Dr. Ennix for complications some patients experienced during or following cardiac
4 surgery—unsurprising complications all Defendants knew did not reflect any lack of skill or
5 attention by Dr. Ennix. After subjecting Dr. Ennix to months of an unwarranted and humiliating
6 review process, Alta Bates Summit suspended Dr. Ennix’s surgical privileges based on
7 demonstrably false accusations that Dr. Ennix had neglected patients, and then reinstated Dr.
8 Ennix’s surgical privileges only upon the condition that he have a proctor present at all surgeries.
9 During this proctorship period, Defendant Isenberg, then President of the Medical Staff of the
10 Summit Campus, Alta Bates Summit, summarily suspended Dr. Ennix a second time without
11 justification and without first consulting the proctors. Months later, Defendants refused to
12 remove the proctoring requirement even after the panel of proctors—having observed twenty-
13 nine of Dr. Ennix’s surgeries—unanimously called for the lifting of the proctoring restriction.
14 Dr. Ennix suffered hundreds of thousands of dollars in lost income, devastating damage to his
15 reputation, and emotional distress as a result of Defendants’ groundless and malicious actions.
16 Dr. Ennix is informed and believes that Alta Bates Summit has not subjected a white surgeon to
17 such harsh and unjustified treatment.

18 3. Throughout this tortuous peer review process, all evaluations of Dr. Ennix’s
19 performance provided by qualified, disinterested experts found no deviation from the standard of
20 care and no justification for the restrictions placed on Dr. Ennix’s privileges. Indeed, the
21 Medical Board of California, after evaluating cases in question and the actions taken against Dr.
22 Ennix, concluded that “[t]here is no evidence whatsoever, in these reviewed cases, that the
23 conduct of Dr. Ennix, preoperatively, intraoperatively, or postoperatively, has violated the
24 standard of practice in cardiac surgery.” Thus, Defendants could not reasonably have believed
25 that the restrictions they imposed on Dr. Ennix were warranted by the facts or furthered quality
26 health care; rather, their actions were motivated by malice and racial discrimination.

27 4. This lawsuit claims race discrimination (42 U.S.C. Section 1981), violations of
28 the Unruh Act (California Civil Code Section 51 *et seq.*), interference with Dr. Ennix’s right to

1 practice his profession, violations of the Cartwright Act (California Business & Professions Code
2 Section 16700, *et seq.*), and violations of California's Unfair Competition Law (Business &
3 Professions Code Section 17200, *et seq.*), against Alta Bates Summit, the Individual Defendants
4 and Does 1-100. As detailed below, Alta Bates Summit and the Individual Defendants have
5 discriminated against Dr. Ennix based on his race, conspired to injure Dr. Ennix's business
6 prospects and reputation, and otherwise caused damage to Dr. Ennix and his career.

7 PARTIES AND VENUE

8 5. Plaintiff Coyness L. Ennix Jr., M.D., is a certified cardiac and thoracic surgeon
9 and the only African American lead cardiac surgeon at Alta Bates Summit. Dr. Ennix obtained
10 certification by the American Board of Surgery in 1978 and the American Board of Thoracic and
11 Cardiac Surgery in 1980, 1989 and 1999. Dr. Ennix currently has surgical privileges at the
12 Summit and Alta Bates Campuses of Alta Bates Summit, Doctors Hospital in San Pablo,
13 Highland General Hospital in Oakland, San Ramon Medical Center in San Ramon, and Valley
14 Care Hospital in Livermore. During the time period relevant to this suit, Dr. Ennix held surgical
15 privileges at Alta Bates Summit, Summit Campus, and Doctors Hospital in San Pablo. Dr. Ennix
16 has held numerous hospital administrative appointments, including Medical Director and Chief
17 of Cardiac Surgery at Alta Bates Medical Center; Chairman of the Cardiac Surgery Quality
18 Management Committee at Alta Bates; Editor-in-Chief of the Alta Bates Cardiac & Vascular
19 Rounds Newsletter; and Director of the Annual Cardiology Conference at Alta Bates. Dr. Ennix
20 has also served on the Sutter Cardiac Services Oversight Committee. Dr. Ennix's teaching
21 appointments have included Assistant Clinical Professor of Surgery at the University of
22 California and Assistant Professor of Surgery at Baylor College of Medicine in Houston, Texas.
23 Dr. Ennix is the founder and past president of the Bay Area Society of Thoracic Surgeons and
24 past president of the California affiliate of the American Heart Association. He received the
25 Frank Jordan Outstanding Citizen Award and American Heart Association Honored Citizen
26 Award for his professional and civic contributions. Dr. Ennix has written and lectured
27 extensively in his field of cardiac surgery. Dr. Ennix currently serves as Secretary of the Bay
28 Area Society of Thoracic Surgeons, President of the Marcus Foster Educational Institute,

1 member of the Clinical Advisory Panel of the California CABG Outcomes Reporting Program
2 and Co-Chairman of Mayor Ron Dellums' Oakland Health Task Force.

3 6. Dr. Ennix resides in Piedmont, California. Plaintiff sues on his own behalf and on
4 behalf of the general public.

5 7. During the period of time relevant to this suit, Dr. Ennix, Defendant Russell
6 Stanten, Defendant Leigh Iverson and Junaid Khan, M.D. co-owned a cardiac surgery
7 partnership known as East Bay Cardiac Surgery Center, Medical Group.

8 8. Plaintiff is informed and believes that defendant Alta Bates Summit is a non-
9 profit entity doing business in Oakland and Berkeley, California.

10 9. Defendant Steven Stanten, M.D. is Chair of the Department of Surgery and the
11 Surgical Peer Review Committee at Alta Bates Summit, Summit Campus. Plaintiff is informed
12 and believes that Steven Stanten is a resident of Contra Costa County.

13 10. Defendant Russell D. Stanten, M.D. is a cardiac surgeon at the Summit Campus
14 of Alta Bates Summit and is the brother of Defendant Steven Stanten. Russell Stanten was a
15 member of the Surgical Peer Review Committee, Chief of Cardiac Surgery and a partner in the
16 East Bay Cardiac Surgery Center, Medical Group during the time relevant to this suit. Plaintiff
17 is informed and believes that Russell Stanten is a resident of Contra Costa County.

18 11. Defendant Leigh I.G. Iverson ("Iverson") was a cardiac surgeon at Alta Bates
19 Summit, a member of the Surgical Peer Review Committee and a partner in the East Bay Cardiac
20 Surgery Center, Medical Group during the time relevant to this suit. Plaintiff is informed and
21 believes that Iverson is a resident of Monterey County.

22 12. Defendant William M. Isenberg, M.D., Ph.D. ("Isenberg") is a member of the
23 Medical Executive Committee at the Summit Campus of Alta Bates Summit and was the
24 President of the Medical Staff, Summit Campus, at Alta Bates Summit during the time period
25 relevant to this suit.

26 13. Plaintiff is informed and believes that Defendants, and each of them, including all
27 Doe Defendants, were at all times relevant the agents and/or employees of every other
28 Defendant, and in doing the things herein alleged were acting within the course and scope of that

1 agency and with the knowledge and/or consent of each co-Defendant. Plaintiff is further
2 informed and believes that each of the Defendants herein gave consent to, ratified, and
3 authorized the acts alleged herein to each of the remaining Defendants. Defendants are sued
4 both in their own right and on the basis of respondeat superior.

5 14. The true names and capacities of Defendants named herein as Does 1 through
6 100, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff,
7 who therefore sues such Defendants by such fictitious names pursuant to California Code of
8 Civil Procedure § 474. Plaintiff is informed and believes that Doe Defendants are California
9 residents and/or unknown business entities authorized to do business in the State of California.
10 Plaintiff will amend this complaint to show the true names and capacities of such Doe
11 Defendants when and as they have been determined.

12 15. Plaintiff is informed and believes that each Defendant is responsible for Plaintiff's
13 damages as alleged herein and each is jointly and severally liable with all other Defendants.

14 16. Venue is proper in the Northern District because the events that gave rise to the
15 claims occurred in that District.

16 ALLEGATIONS

17 17. From 1981 to 1993, Dr. Ennix was a partner in a five-person cardiac surgery
18 group which included Iverson, practicing at Summit Hospital in Oakland. In 1993, Dr. Ennix
19 and another partner, Dr. J. Nilas Young ("Young"), separated from the group and commenced an
20 independent cardiac surgery program at Alta Bates Hospital in Berkeley. The Alta Bates
21 program proved to be very lucrative for Drs. Ennix and Young, which lead to resentment and
22 friction among Dr. Ennix's former partners, including Iverson.

23 18. In April 2001, Dr. J. Nilas Young left the practice at the Alta Bates Campus. In
24 the fall of 2001, Dr. Ennix merged his practice with that of Junaid Khan, M.D., and Defendants
25 Iverson and Russell Stanten to form the East Bay Cardiac Surgery Center, Medical Group. Dr.
26 Ennix championed the cause of consolidating cardiac surgeries from Alta Bates with cardiac
27 surgeries at the Summit Campus. In the Fall of 2002, the medical staff and administration agreed
28 to close the Alta Bates cardiac surgery program.

1 19. In 2003, Dr. Ennix was the busiest surgeon performing cardiac procedures among
2 the private doctors practicing at the Summit Campus. During that year, Dr. Ennix began
3 promoting the idea of developing a minimally invasive cardiac surgery and robotic surgery
4 program at Summit. Minimally invasive cardiac surgery was a relatively new technique
5 requiring specialized equipment and training. The technique allows surgeons to perform cardiac
6 surgery by way of a small incision on the side of the rib cage, instead of by opening the chest at
7 the sternum, which can cause substantial noticeable scarring. In partnership with the Alta Bates
8 Foundation, Dr. Ennix helped to raise one million dollars to fund purchase of the robot, and
9 attended numerous training programs throughout the United States on minimally invasive and
10 robotic techniques. Defendant Steven Stanten, chair of the Department of Surgery, was
11 interested in the use of the robot for general surgery and assisted in the establishment of a
12 Robotic Surgical Program at Summit.

13 20. In January and February of 2004, Dr. Ennix performed four minimally invasive
14 cardiac surgery procedures (also known as "Heart Port" procedures) at the Summit Campus. In
15 these cases, Dr. Ennix and the surgical staff encountered issues such as prolonged procedure
16 time, increased blood usage and conversion to the more traditional approach. None of these
17 issues was unexpected given the newness of the minimally invasive surgical technique
18 employed. Nevertheless, these four cases came to the attention of the Defendant Steven Stanten,
19 Chair of the Department of Surgery and Chair of the Surgical Peer Review Committee ("SPRC")
20 at the Summit Campus, who called for a moratorium on all minimally invasive cardiac surgery
21 procedures, pending further evaluation. Dr. Ennix was the only surgeon to have completed any
22 minimally invasive cardiac procedures at that time, and Dr. Ennix suspended use of this
23 technique in compliance with the moratorium. Dr. Steven Stanten asked another cardiac
24 surgeon, Dr. Hon Lee, an Asian American and a member of the Kaiser Permanente Medical
25 Group, to review the four minimally invasive surgeries with regard to the standard of care. Dr.
26 Lee concluded that there were no patient care concerns on any of the four cases.

27 21. The SPRC reviewed Dr. Lee's report on April 10, 2004. The SPRC included
28 Chair Steven Stanten (a general surgeon), his brother Russell Stanten and Iverson—the sole

1 cardiac surgeons on the committee and Dr. Ennix's partners—as well as a urologist, an
2 Ear/Nose/Throat Specialist and several general surgeons. Despite Dr. Lee's clearing of the four
3 cases of any patient care issues and despite his own lack of expertise in cardiac surgery, Steven
4 Stanten expressed his concern that the cases presented care issues. Minutes from this meeting
5 reflect that the SPRC questioned whether the long operating times were justified by the new
6 technique and expressed concern regarding Dr. Ennix's overall patient selection, technical skills,
7 and judgment. The SPRC declined to accept Dr. Lee's findings that issues with the cases were
8 of documentation, not care. Dr. Ennix was not afforded an opportunity to address the SPRC
9 regarding the four minimally invasive cases or the general concerns referred to in the minutes.
10 Plaintiff is informed and believes that his partners Iverson and Russell Stanten supported Steven
11 Stanten's initiative to further investigate Dr. Ennix in spite of Dr. Lee's report: as the only
12 cardiac surgeons on the SPRC, their opinions would have carried significant weight with the
13 SPRC.

14 22. On April 16, 2004, Dr. Steven Stanten and Dr. Isenberg informed Dr. Ennix of the
15 SPRC's conclusions regarding the four minimally invasive procedures and other generalized
16 concerns. Steven Stanten and Isenberg also informed Dr. Ennix that the moratorium on
17 performing minimally invasive procedures had been lifted, allowing other surgeons, such as
18 Steven Stanten's brother, Russell Stanten, to perform minimally invasive cardiac surgery
19 procedures. However, Steven Stanten and Isenberg recommended that Dr. Ennix continue to
20 refrain from performing the minimally invasive cardiac surgery procedures until the issues raised
21 by the SPRC could be resolved by an ad hoc committee. Thereafter, despite the fact that Dr.
22 Ennix had voluntarily suspended performing minimally invasive procedures before the SPRC
23 decided to investigate his performance, Isenberg submitted a report to the Medical Board of
24 California and the National Practitioner Data Bank stating that Dr. Ennix had suspended use of
25 the procedure while under investigation.

26 23. Several months later, Isenberg and the MEC established an Ad Hoc Committee
27 ("AHC") to review the four minimally invasive procedures and the other generalized concerns
28 discussed in the April 10, 2004 SPRC meeting. Although there were ten cardiac surgeons and

1 more than forty cardiologists on the medical staff, the AHC did not include any cardiac surgeons
2 or cardiologists. Defendant Isenberg, President of the Medical Staff, appointed Lamont Paxton
3 to be Chairman of the AHC. Paxton was a member of the SPRC who had presumably attended
4 the April 10, 2004 meeting and knew of comments regarding Dr. Ennix by Steven Stanten and
5 Dr. Ennix's business partners Russell Stanten and Iverson.

6 24. After many months of delay, and without affording Dr. Ennix the opportunity to
7 appear before the AHC despite his requests, on January 4, 2005, the AHC requested that a
8 private, outside peer review organization called National Medical Audit ("NMA") review not
9 only the four minimally invasive cases, but also an additional six cases that had previously
10 undergone peer review by the Summit Cardiac Surgery Peer Review Committee and had been
11 found to present no patient care issues. Dr. Ennix objected to the referral to NMA, which
12 appeared to be a sham outfit, comprised of a nephrologist who had not practiced medicine in
13 many years, a surgeon with a very poor performance record, and a surgeon who had never
14 practiced in California. On May 3, 2005, the NMA returned an unsigned report harshly
15 criticizing Dr. Ennix's performance on all ten of the reviewed cases. The NMA report was at
16 odds with the Summit Cardiac Surgery Peer Review, Dr. Lee's report, subsequent reviews of the
17 cases by several nationally renowned cardiac surgeons and, ultimately, the review by the
18 Medical Board of the State of California.

19 25. On May 4, 2005, Dr. Ennix performed an operation in which he replaced two
20 valves in a young male patient ("double valve patient"). The surgery went very well. The next
21 day, Dr. Ennix performed surgery on two very ill patients. That day, Dr. Ennix made rounds on
22 the double valve patient twice—once in the morning and once in the afternoon—as is
23 documented in the nurses' notes. Dr. Ennix did not himself note his rounds on the double valve
24 patient because he was busy with the two surgeries scheduled that day. The next day, May 6,
25 2005, Dr. Ennix made rounds on the double valve patient again, noted those rounds, and then
26 noted his previous rounds on that patient which he had been unable to record the day before.

27 26. On May 11, 2005, Defendant Isenberg, President of the Medical Staff, summarily
28 suspended Dr. Ennix alleging that he had placed the double valve patient in danger by not

1 making rounds on the patient on May 5th. Isenberg accused Dr. Ennix of not only failing to see
2 the double valve patient, but also of falsifying the record claiming that he had seen the patient.
3 Dr. Ennix produced a letter from the on-duty nurse as well as nurses' notes verifying that he had
4 seen the patient more than once on May 5th. Despite this, the MEC upheld the suspension on
5 May 18, 2005 pending the outcome of the AHC process.

6 27. Faced with a complete loss of his ability to practice, Dr. Ennix asked Dr. Isenberg
7 to at least allow him to continue surgical assisting. The MEC accepted Dr. Ennix's proposal.

8 28. Dr. Ennix requested a hearing pursuant to Article VIII, Section 8.36 of the
9 Medical Staff Bylaws to review Isenberg's summary suspension and the MEC's subsequent
10 upholding of that suspension. However, Isenberg and Alta Bates Summit insisted that no hearing
11 rights attached to these actions because Dr. Ennix "expressly stipulated" to surgical assisting in
12 lieu of suspension.

13 29. Despite the fact that the medical staff includes several other cardiac surgeons,
14 plaintiff is informed and believes that the AHC solicited the help of Dr. Ennix's partners Russell
15 Stanten and Iverson—both of whom had participated in the initial SPRC meetings regarding Dr.
16 Ennix initiated by Steven Stanten, the brother of Russell Stanten—to help determine the validity
17 of the NMA report. Russell Stanten concluded that the report was very thorough and valid. The
18 AHC delivered a harsh review of Dr. Ennix that recommended reinstating Dr. Ennix's surgical
19 privileges subject to the requirement that he have a proctor present. On September 7, 2005, the
20 MEC upheld the AHC's report and recommendation.

21 30. Approximately forty-five days later, Alta Bates Summit gave Dr. Ennix two
22 choices: either appeal the MEC's decision and remain suspended indefinitely or accept a
23 condition that he have a proctor present at all his surgeries. In order to begin rebuilding his
24 surgical practice as quickly as possible, Dr. Ennix was forced to opt for the latter course. On
25 October 25, 2005, Dr. Ennix voluntarily separated from his business partners, secured six staff
26 cardiac surgeons from the Kaiser Permanente Medical Group to serve as proctors, and began a
27 solo cardiac surgery practice which he retains today.
28

1 31. On December 30, 2005, in the final days of Isenberg's tenure as President of the
2 Medical Staff, Dr. Isenberg, an obstetrician and gynecologist, again summarily suspended Dr.
3 Ennix' privileges without justification. Further, Isenberg imposed the summary suspension
4 without first consulting the proctors who had been observing Dr. Ennix' surgeries. After
5 consulting officers of the MEC, Dr. Isenberg reinstated Dr. Ennix' proctor-restricted privileges
6 on January 6, 2006.

7 32. On April 19, 2006, the proctors reported on the twenty-nine surgical cases they
8 had proctored, stating that "[i]t was the unanimous opinion that Dr. Ennix met" or exceeded
9 expectations in pre-operative and post-operative phases, and met the standard of care in the peri-
10 operative phases. The proctors went on to state "'[i]t is with unanimous decision from the group
11 of proctors, that we recommend the proctorship be terminated and that Dr. Ennix be reinstated to
12 the medical staff with full unrestricted privileges."

13 33. Despite the proctors' evaluation and recommendation, the MEC voted to continue
14 the proctorship requirement, stating that 29 cases was an insufficient number. The MEC finally
15 voted to remove the proctoring requirement on July 11, 2006.

16 34. Dr. Ennix endured fourteen months of restricted privileges, costing him and his
17 family hundreds of thousands of dollars in lost profits, emotional distress and damage to his
18 reputation. Until only recently, Dr. Ennix' cases were subject to ongoing review by the Chief of
19 Cardiac Surgery, Dr. Russell Stanten, upon the recommendation of the AHC. Plaintiff is
20 informed and believes that each Defendant, and especially Plaintiff's former partners and fellow
21 cardiac surgeons Russell Stanten and Leigh Iverson, knew that the four minimally invasive cases
22 were not below the standard of care, particularly in light of Dr. Hon Lee's report confirming this.
23 Plaintiff is further informed and believes that Steven Stanten, Russell Stanten, Isenberg and
24 Iverson knew that the other cases reviewed by the AHC were within the standard of care, as the
25 Summit Cardiac Surgery Peer Review Committee had concluded. Plaintiff is further informed
26 and believes that Isenberg and the MEC acted with racially-based malice and in reckless
27 disregard of the facts in suspending Plaintiff's privileges, and subjected Dr. Ennix to far harsher
28 treatment than similarly situated white physicians.

1 35. Individual Defendants provided information to the SPRC, AHC, NMA and MEC
2 that they knew to be false. Defendants' professional review actions—including the SPRC's
3 decision to review Dr. Ennix's performance notwithstanding that Dr. Lee and the Summit
4 Cardiac Surgery Peer Review Committee had previously determined there had been no breach in
5 the standard of care; Dr. Isenberg's report to the Medical Board of California and the National
6 Practitioner Data Bank that Dr. Ennix suspended use of minimally invasive procedures while
7 under investigation; the MEC's and SPRC's assignment of the review to the AHC which
8 included no cardiac surgeons or cardiologists, thus ensuring that the AHC would have no means
9 to critically assess the facts; the SPRC's failure to allow Dr. Ennix to address it regarding the
10 issues; the AHC's referral of the matter to the sham peer review outfit NMA; the suspension of
11 Dr. Ennix's privileges based on demonstrably false allegations that he neglected a patient; Dr.
12 Isenberg's second unwarranted summary suspension of Dr. Ennix's privileges; the AHC's heavy
13 reliance on the false, malicious and self-serving representations of Dr. Ennix's partners Russell
14 Stanten and Iverson in their evaluation of the NMA report and Dr. Ennix's performance; the
15 AHC's factually groundless report and recommendation; the MEC's decision on that
16 recommendation to require Dr. Ennix to practice only with a proctor present; and finally the
17 MEC's decision to continue the proctorship requirement despite the unanimous opinion of all six
18 proctors that the requirement should be immediately lifted (collectively "Professional Review
19 Actions")—were not taken in the reasonable belief that they furthered quality health care. Nor
20 were these actions taken after a reasonable effort to obtain the facts, or in the reasonable belief
21 that the actions were warranted by the facts. Rather, Defendants took the Professional Review
22 Actions against Dr. Ennix with the malicious and racially-motivated intent to destroy Dr. Ennix's
23 career and eliminate one of the most successful cardiac surgeons practicing at Alta Bates
24 Summit.

25 36. Plaintiff exhausted all administrative remedies available to him.
26
27
28

FIRST CAUSE OF ACTION

Race Discrimination in violation of 42 U.S.C. § 1981
(Against Alta Bates Summit and Does 1-100)

37. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

38. Alta Bates Summit's conduct as alleged in this complaint violates 42 U.S.C. § 1981, which guarantees that all citizens shall have the same rights under the law as are enjoyed by white citizens.

39. Dr. Ennix is African American.

40. In taking the Professional Review Actions, Alta Bates Summit intended to discriminate against Dr. Ennix on the basis of Dr. Ennix's race and treated Dr. Ennix differently than similarly situated white physicians.

41. Such actions and discrimination concerned Dr. Ennix's abilities to perform his contractual duties with Alta Bates Summit and his patients and Dr. Ennix's abilities to enjoy the benefits, privileges, terms, and conditions of those contractual relationships.

42. Dr. Ennix suffered damages proximately caused by Alta Bates Summit's conduct.

SECOND CAUSE OF ACTION

Race Discrimination in violation of Unruh Civil Rights Act
(Against Alta Bates Summit and Does 1-100)

43. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

44. The Professional Review Actions violate California Civil Code § 51, *et seq.*, which prohibits any business establishment from discriminating against any person on account of race.

45. In taking the Professional Review Actions, Defendants intended to discriminate against Dr. Ennix on the basis of Dr. Ennix's race and treated him differently than they treat similarly situated white physicians.

46. As alleged herein, Defendants specifically discriminated against Dr. Ennix because of Dr. Ennix's race in taking the Professional Review Actions. Defendants denied Dr. Ennix full and equal advantages and privileges because of Dr. Ennix's race.

1 47. Dr. Ennix suffered damages proximately caused by Defendants' conduct.

2 **THIRD CAUSE OF ACTION**

3 Violation of Cartwright Act

4 (Against Iverson, Russell Stanten, Steven Stanten, William Isenberg and Does 1-100)

5 48. Plaintiff incorporates by reference all paragraphs set forth above as though fully
6 set forth herein.

7 49. Iverson, Russell Stanten, Steven Stanten and Isenberg formed and operated a
8 conspiracy or combination to provide false information and false opinions regarding Dr. Ennix's
9 professional competence, judgment and skill, to initiate a sham peer review process against Dr.
10 Ennix, and to impose unwarranted and professionally and financially devastating restrictions on
11 his surgical privileges.

12 50. The purpose of the conspiracy was to restrain trade by eliminating Dr. Ennix from
13 the pool of lead cardiac surgeons available in his region.

14 51. Dr. Ennix suffered damages proximately caused by Defendants' conspiratorial
15 conduct.

16 **FOURTH CAUSE OF ACTION**

17 Interference with Right to Practice Profession

18 (Against All Defendants)

19 52. Plaintiff incorporates by reference all paragraphs set forth above as though fully
20 set forth herein.

21 53. Defendants' conduct as alleged in this complaint violates the common law
22 doctrine that prohibits intentional interference with one's right to practice a profession by means
23 that are either unlawful or that are otherwise lawful, but unprivileged or without sufficient
24 justification.

25 54. By taking the Professional Review Actions which were factually unwarranted, not
26 in furtherance of quality health care and motivated by race-based discrimination, Defendants
27 have unlawfully interfered with Dr. Ennix's right to practice his profession without privilege or
28 sufficient justification.

55. Dr. Ennix suffered damages proximately caused by Defendants' conduct.

FIFTH CAUSE OF ACTION

Business & Professions Code Section 17200, *et seq.*
(Against All Defendants)

56. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

57. The Professional Review Actions violate Business and Professions Code §§ 17200 *et seq.*, which prohibit unlawful, unfair, and/or fraudulent business acts or practices.

58. As alleged herein, Defendants' Professional Review Actions were unlawful, in that the Actions discriminated against Dr. Ennix based on his race, and lacked factual justification. As such, Defendants' actions constitute an unlawful, unfair, and/or fraudulent business act or practice within the meaning of Business and Professions Code §§ 17200 *et seq.*

59. Dr. Ennix lost profits and suffered injury in fact as a result of Defendants' actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the defendants, and each of them, as follows:

1. For an award of compensatory, restitution, disgorgement and other special and general damages according to proof;

2. For an award of punitive damages;

3. For an award of interest, including prejudgment interest, at the legal rate;

4. For an award of costs of suit incurred herein on all causes of action;

5. For an award of attorneys' fees;

6. For an injunction pursuant to California Business & Professions Code Section 17203 requiring Alta Bates Summit to take immediate action to prevent future racial-based discrimination against Plaintiff and any Alta Bates Summit employees;

7. For such other and further relief as this court deems just and proper.

JURY DEMAND

Plaintiff requests this matter be tried before a jury.

Dated: May 8, 2007

Respectfully Submitted,

MOSCONE, EMBLIDGE & QUADRA, LLP

By: 

G. Scott Emblidge

Rachel J. Sater

Andrew E. Sweet

Attorneys for Coyness L. Ennix Jr., M.D.

CERFICATE OF INTERESTED ENTITLED OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: May 8, 2007

By: 

G. Scott Emblidge

Attorneys for Coyness L. Ennix Jr., M.D.